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August 1, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Petition of the Office of Regulatory Staff to Request Forfeiture of the
Bond and to Request Authority to Petition the Circuit Court for
Appointment of a Receiver.
PSC Docket No.: 2005-110-W/S

Dear Mr. Terreni:

For your docket, please find enclosed the original and fifteen (15) copies of the Office of Regulatory Staff's Response to Piney Grove Utilities, Inc.'s Supplemental Answer in Response to the Office of Regulatory Staff's above-referenced Petition. Also, if you would please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions

Sincerely,

Benjamin P. Mustian

BPM/rng
Enclosures

cc: D. Reece Williams, IV, President
Louis Lang, Esquire
Jessica J.O. King, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2005-110-W/S

IN RE: Petition of the Office of Regulatory)
Staff to Request Forfeiture)
of the Piney Grove Utilities, Inc.)
Bond And to Request Authority)
To Petition the Circuit Court for)
Appointment of a Receiver)
_____)

CERTIFICATE OF SERVICE


This is to certify that I, Rena Grant, an employee with the Office of Regulatory Staff, have this date served one (1) copy of the **Office of Regulatory Staff's Response to Piney Grove Utilities, Inc.'s Supplemental Answer in Response** in the above-referenced matter to the person(s) named below:

VIA CERTIFIED MAIL

Louis Lang, Esquire
Callison, Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, SC 29202-1390

VIA U.S. MAIL

Jessica J.O. King, Esquire
DHEC
2600 Bull Street
Columbia, SC 29201



Rena Grant

August 1, 2005
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2005-110-W/S

AUGUST 1, 2005

IN RE: Petition of the Office of Regulatory)	RESPONSE TO PINEY GROVE
Staff to Request Forfeiture)	UTILITIES, INC.'S SUPPLEMENTAL
of the Piney Grove Utilities, Inc.)	ANSWER IN RESPONSE TO THE
Bond And to Request Authority)	PETITION OF THE OFFICE OF
To Petition the Circuit Court for)	REGULATORY STAFF
Appointment of a Receiver)	

The Office of Regulatory Staff ("ORS") hereby responds to the Supplemental Answer filed by the respondent in the above referenced docket on July 29, 2005.

1. In its Supplemental Answer filed on July 29, 2005, Piney Grove Utilities, Inc. ("Piney Grove") requested that the Commission dismiss ORS's Petition based upon its assertion that "the Petition has been rendered moot, in whole or in part, by way of" certain consent orders entered recently in the Court of Common Pleas.

2. "Mootness has been defined as follows: 'A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.'" Byrd v. Irmo High School, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) *quoting* Mathis v. South Carolina State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). In part, the request that has been placed before the Commission for a ruling and, therefore, one of the existing controversies in this matter, is whether ORS should be granted the authority to petition the Circuit Court for appointment of a receiver pursuant to S.C. Code Ann. § 58-5-730 (1976). The relevant issue to be decided by this Commission is not whether a receiver should, in fact, be

appointed. The recent proceedings in Circuit Court do not affect the instant matter relating to whether ORS should be granted that ability.

3. As stated in the Supplemental Answer, DHEC has petitioned the Circuit Court for approval of receivership agreements for two of Piney Grove's systems and has been granted authority to pursue a third for the Lloydwood system. Simply because another party with a similar interest has been able to enter into a temporary arrangement does not and should not preclude the Commission from making a determination as to whether ORS has a similar right. ORS is pursuing the authority to appoint a receiver in a manner which is unique to the Commission's jurisdiction and is separate from that of the Judicial Branch. Further, whether or not the Commission grants ORS the authority to petition the Circuit Court will have substantial legal effect on ORS's ability to strive to reach an agreement with a potential receiver.

DHEC is, currently, the only party to these proceedings which has the independent ability to petition the Circuit Court for this relief; however, the fact that another party has similar legal authority should not estop ORS from having that same authority to pursue similar remedies. The nature of a receivership agreement is such that ORS may be able to provide certain incentives to a party to become a receiver for these systems. At a minimum, if ORS and DHEC both are endowed with the ability to enter such an arrangement, they may be able to jointly enter an agreement and pursue negotiations with greater influence which would only strengthen the possibility that such a receiver will be appointed. If the Commission determines this proceeding is moot, ORS will not have been allowed the ability to adequately pursue its statutory obligations to protect the public interest and its legal right to pursue such authority will have been abridged. The Commission should not relinquish its jurisdiction over this matter simply because DHEC is pursuing a separate, but similar, resolution.

4. Even if the Commission deems this aspect of the petition moot, the Commission should not dismiss this action for the purposes of judicial economy. As held in several South Carolina decisions, there exist certain exceptions to the mootness doctrine including allowing a court to examine matters that are capable of repetition, yet evade review. Certain courts have held that the court may retain jurisdiction if “(1) the challenged action in its duration was too short to be fully litigated prior to its cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subjected to the action again.” Byrd at 864. “Other cases have taken a less restrictive approach in defining the exception, holding that a court can take jurisdiction, despite mootness, if ‘the issue raised is “capable of repetition but evading review.”’” *Id.* In the present matter, the Commission has yet to hear evidence from either side as to the adequacy and the propriety of the service offered by Piney Grove. Further, while Richland County has been appointed as receiver for Albene and Franklin Park, the receivership arrangement is temporary. Specifically, Richland County is only bound by the terms of this agreement for one year and may be relieved of its receivership duties prior to this time upon seven days written notice. While a receiver has not been appointed for the Lloydwood system, it is reasonable to believe that a similar procedure would be established for such a receiver. As a result, a dismissal of ORS’s petition would result in a hardship on both the Commission and the parties to this proceeding in that ORS would be compelled to file an additional request for authority to pursue proceedings in the Circuit Court in the event the current receiver withdrew from its commitment.


5. Regardless of the issues surrounding ORS’s request for authority to be appointed as a receiver, the Petition also requests that the Commission revoke the bond on file for Piedmont Water Company as parent company of Piney Grove Utilities, Inc. While a temporary

receiver has been appointed and is currently operating Albene and Franklin Park, pursuant to the court order, Piney Grove is still ultimately responsible for those systems and for the Lloydwood systems. Whether the bond should be revoked in order to ensure financial means to provide the statutorily required adequate and proper service is still an issue over which the Commission may grant effectual relief. Similarly, the Petition filed by ORS also requests that the Commission impose and assess appropriate penalties against Piney Grove for their failure to provide adequate and proper service for an unreasonable length of time. Finally, the Commission, in issuing its Order No. 2005-210 in this docket established a hearing for "the Company to show cause why it should not be held that the Company has failed to provide adequate and proper service and why it should not be held that any such failure has continued for an unreasonable length of time." Dismissal of this proceeding based upon circumstances solely surrounding the appointment of a receiver for two of the systems would prevent this Commission from granting the effectual relief requested by ORS and would prevent Piney Grove from appearing before the Commission to present information as to the adequacy and propriety of its service as previously ordered.

WHEREFORE, ORS prays that the Honorable Commission:

1. Deny the request of the Respondent to dismiss the instant Petition;
2. For other appropriate action which the Commission may deem necessary.

OFFICE OF REGULATORY STAFF

By: 
Benjamin P. Mustian, Esq.
Post Office Box 11263
Columbia, South Carolina 29211
Telephone: (803) 737-0800

Columbia, South Carolina
August 1, 2005